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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CITY OF MORENO VALLEY, Plaintiff and Respondent, v. RADENE HIERS, Defendant and Appellant.	E056521 (Super.Ct.No. RIC1200952) OPINION

APPEAL from the Superior Court of Riverside County. Paulette Durand Barkley, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Radene Hiers, in pro. per., for Defendant and Appellant.

Orrick, Herrington & Sutcliffe, Michael C. Weed, Cameron L. Desmond, Bill W. Bothwell and Kevin Hale for Plaintiff and Respondent.

I

INTRODUCTION[1]

Radene Hiers, defendant, appeals the trial court's denial of her motion to set aside a default judgment (§ 473, subd. (b)) in a validation action brought by the City of Moreno Valley (City) under section 860 et seq. Hiers argues that she did not have to file a written response and that by personally going to the courthouse on March 5, 2012, the last response date, that she preserved her right to contest the validation action.

The trial court found that Hiers had actual notice of the validation action but she did not file a timely written response as required to contest the validation action. Hiers made no showing of legally excusable neglect or inadvertence. The trial court did not abuse its discretion by denying Hiers's motion for relief. We affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGOUND[2]

Hiers is representing herself in propria persona.

On January 10, 2012, the City adopted Resolution 2012-03, authorizing the City to enter into an installment sales agreement with the California Statewide Communities Development Authority (Authority) for a project for roadway improvements (the Project). The Project was to be financed by certificates of participation (Certificates).

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[1] All statutory references are to the Code of Civil Procedure unless stated otherwise.

[2] Many of the facts are not essential to a resolution of the appeal but we present them here to give meaningful context to our analysis.

The City planned to pay for the Project by installment payments, not to exceed $20 million, with revenue from gas taxes and Measure A. The City found the subject transaction would have significant public benefits in the form of savings.

On January 20, 2012, the City filed a validation action in rem seeking approval of the subject transaction and all related proceedings. (§ 860.)

On January 24, 2012, the City made an ex parte application for an order for publication of summons in a newspaper of general circulation. (§ 861.) The court granted the order on January 25, 2012. The summons included notice that interested persons had to appear and file a written responsive pleading no later than March 5, 2012. The summons was published on February 3, 10, and 17, 2012. The summons was also posted in two locations from January 26, 2012, to February 25, 2012. As of March 6, 2012, no interested person contacted the City's attorney about the validation action. The foregoing procedure complied with sections 861 through 864.

In March 2012, the City filed a request for entry of default and an ex parte application for entry of a default judgment. The court granted the default judgment on March 21, 2012.

On April 9, 2012, Hiers filed a motion to vacate the default judgment on the grounds of inadvertence, oversight, and that "[p]laintiff's pleading is incomplete and inaccurate." The substance of Hiers's objections to the validation action, as set forth in her proposed answer and supporting declaration, was that a developer, Aquabella, was contractually obligated to pay for the proposed street improvements and the City should not bear the costs.

On April 23, 2012, Hiers also filed a motion for an injunction that was taken off calendar by agreement of the parties.

The City filed opposition, observing that Hiers offered no support for her claim of inadvertence and therefore she was not entitled to relief from default under section 473, subdivision (b). Furthermore, Hiers had attended the public hearing on January 10, 2012, and spoke in opposition to the Project. Therefore, she was on notice of the validation action.

In her reply, Hiers admitted knowing about the validation action because she attended the public hearing in January 2012. She also admitted going to the courthouse on March 5, 2012, but she admitted that she did not file an answer. The court clerk told Hiers there was a hearing in the case on July 25, 2012,[3] and Hiers believed she "did not have to file any paperwork until closer to" that date. On Wednesday, April 4, 2012, Hiers was surprised to learn about the default judgment. She filed her motion to vacate on Monday, April 9, 2012.

At the hearing on May 11, 2012, Hiers repeated her explanation about misunderstanding the legal procedures required to contest a validation action. The court found that Hiers had actual notice and she knew she had to file a response by March 5, 2012. Therefore, the court denied the motion to vacate.

[3] After the City properly obtained the default judgment, the case management conference date set for July 25, 2012, was vacated.

III

SECTION 473

Hiers asserts there are at least nine separate issues to be resolved on appeal, including the merits of the Project and the state and federal constitutionality of California's validation statutes and the financing mechanism of the validation action. Additionally, Hiers challenges the lower court's jurisdiction, its grant of the default judgment, and its denial of Hiers's motion to set it aside. Hiers disputes that the validation statutes require a written answer and instead she claims she preserved her rights by physically visiting the court on March 5, 2012.

We do not address these issues individually and instead focus on the key issue on appeal. In actuality, the only cognizable issue on appeal is whether, according a high degree of deference to the lower court, the trial court abused its discretion in denying Hiers's motion to set aside the default judgment after she failed to preserve her right to contest the validation action by filing a written response. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Solv-all v. Superior Court* (2005) 131 Cal.App.4th 1003, 1007.) It is particularly important that a judgment in a validation action be accorded certainty and finality. (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 842-843.)

In order to obtain relief under section 473, subdivision (b), Hiers had the burden of proof to establish her default was caused by mistake, inadvertence, surprise, or excusable neglect. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410.) Hiers had to

show actual cause and an explanation for failure to respond by the mandatory deadline. (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206.)

In her appellate brief, Hiers argues that she did not have to file a written response because the validation statutes do not require it and because she went to the courthouse on March 5, 2012, in order to make a response personally as opposed to a written answer. Hiers is wrong because she misreads the applicable statute, section 861.1, which expressly states a written answer is required: "The summons shall be directed to 'all persons interested in the matter of [specifying the matter],' and shall contain a notice to all persons interested in the matter that *they may contest the legality or validity of the matter by appearing and filing a written answer to the complaint* not later than the date specified in the summons, which date shall be 10 or more days after the completion of publication of the summons. [Emphasis added.]" Hiers is apparently relying on an older version of section 861.1–before it was amended in 1998, and when it did not refer to "filing a written answer." (Stats. 1998, ch. 529, § 1.)

Hiers may have relied on an invalid version of the validation statute but her error does not constitute mistake, inadvertence, surprise, or excusable neglect justifying relief under section 473, subdivision (b). As the court commented in *Community Redevelopment Agency v. Superior Court* (1967) 248 Cal.App.2d 164, 174-175: "'Ignorance of the law, at least where coupled with negligence in failing to look it up, will not justify a trial court in granting relief . . .' [Citation.] . . . To paraphrase the language of the court in *Evelyn, Inc. v. California Emp. Stabilization Com.*, 48 Cal.2d 588 at 591, the record in this case reveals no set of circumstances which would justify a

finding of good cause for the failure . . . to follow the procedural requirements of the pertinent sections of the codes, however honest [the] mistake may have been. As the court there said: 'A bona fide but mistaken belief that the law does not require a particular course of conduct does not constitute a good cause for a failure to comply therewith.'"

The record unquestionably demonstrates that Hiers knew about the validation action and had actual notice that a written answer was required by March 5, 2012. Showing up at the courthouse without filing a written notice did not preserve her right to contest the validation action. Her effort to blame court staff for giving her information about the date of the upcoming hearing on July 25, 2012, did not offer any valid excuse for not filing a timely written answer. The fact that Hiers did not obtain legal representation or advice is also not an excuse. (*Goodson v. Bogerts, Inc.* (1967) 252 Cal.App.2d 32, 40.) Under these circumstances, Hiers did not preserve her right to contest the validation action and the trial court did not abuse its discretion in denying Hiers's motion for relief from default. (*Hearn v. Howard*, *supra*, 177 Cal.App.4th at pp. 1207-1207.)

As we enumerate above, Hiers raises a myriad of other issues–none of which are material to the only pertinent issues involving the propriety of the default judgment. We are limited in the scope of review on appeal. Even if we could properly consider the validity of Hiers's other contentions we would not accept her additional arguments about the merits of the Project; the state and federal constitutionality of California's validation statutes and the financing mechanism of the validation action; and the lower court's

jurisdiction. In any event, the validation judgment is conclusive as to any issue that was or could have been adjudicated in the validation action. (§ 870.)

We note, however, the City is correct in its assertion that the last response date was correctly calculated as March 5, 2012, exactly 31 days after the first publication date of February 3, 2012. (§§ 861, 861.1; Gov. Code, § 6063.) Hiers incorrectly relies on section 415.50 to argue the last response date should have been March 19, 2012. Section 415.50 does not apply to validation actions which are governed by section 860 et seq. and Government Code section 6063.

IV

DISPOSITION

By not filing a timely written response to the validation action, Hiers did not preserve her right to contest the action (§ 861.1) and the trial court did not abuse its discretion by denying her relief. (§ 437, subd. (b).)

We affirm the judgment. In the interests of justice, we order the parties to bear their own costs on appeal.

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CODRINGTON
J.

We concur:

RICHLI
Acting P. J.

KING
J.